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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 900.

THE UNITED STATES, APPELLANT,

vs.

THE REAL ESTATE SAVINGS BANK OF PITTSBURGH.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 14, 1881.

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1 Court of Claims, December term, 1880.

THE REAL ESTATE SAVINGS BANK OF PITTSburg
vs.
THE UNITED STATES. } No. 12392.

I.—*Petition.*—*Filed Sept.* 17, 1880.

To the honorable Court of Claims:

The Real Estate Savings Bank of Pittsburgh respectfully prefers its petition, to wit:

First. That it is a corporation duly organized under the laws of the State of Pennsylvania and doing business in the city of Pittsburgh and State aforesaid, and that it has at all times borne true allegiance to the Government of the United States, and never in any way voluntarily aided, abetted, or given encouragement to rebellion against the United States.

Second. That on the 10th day of July, 1878, claimant erroneously paid to the United States an internal-revenue tax of $972.69, and that within two years thereafter a claim for the refund of said tax was duly presented in accordance with the terms of the regulations prescribed according to law by the Secretary of the Treasury; that said claim was duly allowed by the Commissioner of Internal Revenue October 21, 1880, and on the 25th day of October, 1880, an account based on the said allowance was duly stated by the Fifth Auditor; that on or about November 12, 1880, the First Comptroller disallowed the said claim and refused to certify the balance arising on the said account, for which reason the same remains unpaid.

Petitioner therefore avers that it is entitled to receive from the United States the sum of $972.69; wherefore it asks judgment for that amount.

GEORGE L. DOUGLASS,
Attorney for Petitioner.

2 DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, a notary public in and for the district aforesaid, George L. Douglass, to me personally known, who made oath in due form and according to law that the statements made in the foregoing petition are true, and that no assignment or transfer of the claim as herein set forth, or any part thereof or interest therein, has ever been made, to the best of his knowledge and belief.

Witness my hand and seal this 17th day of December, 1880.

[SEAL.] MACDONALD DOUGLASS,
Notary Public.

II.—*Traverse.*—*Filed December* 28, 1880.

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided,

3 abetted, or given encouragement to rebellion against the said government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

III.—*Plea of incorporation.*—*Filed Dec.* 28, 1880.

And now comes the Attorney-General, on behalf of the defendants, and denies that the claimant is a corporation duly organized under the laws of the State of Pennsylvania, as alleged in the petition filed herein.

THOMAS SIMONS,
Assistant Attorney-General.

4 IV.—*Findings of fact and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. On the 21st day of October, 1880, the Acting Commissioner of Internal Revenue, on appeal to him made, and in accordance with the regulations prescribed by the Secretary of the Treasury, made and certified for payment the following allowance for refund and payment back to the claimant of certain taxes erroneously assessed and paid, to the amount therein specified:

A schedule of claims for the refunding of taxes erroneously assessed and paid, which have been examined and allowed.

District.	Claimants.	Amount.
* * * *	* * * *	* *
22nd Penn	Real Estate Savings Bank	$1,753 32
* * * *	* * * *	* *

"I hereby certify that the foregoing claims for the refunding of taxes erroneously assessed and paid have been examined and allowed.

"H. C. ROGERS,
"*Acting Commissioner.*

"OFFICE INTERNAL REVENUE, *October* 21, 1880."

II. On presentation of said certificate through the accounting officers of the Treasury Department, there was paid thereon the sum of $780.63. Payment of the balance, amounting to $972.69, was refused, and the same has never been paid, although the certificate aforesaid has not been revoked, but remains in full force.

III. The material regulations prescribed by the Secretary of the Treasury, and recognized by him and by the Commissioner to be in force as applicable to appeals to the Commissioner for the refund and payment back of taxes illegally assessed and collected, and erroneously paid, are as follows:

"Claims for the refunding of taxes erroneously assessed and collected should be presented through the collectors of the respective districts upon blank form No. 46. * * *

"The collector should keep a perfect record, in a book furnished

5 for the purpose, of all claims presented to the Commissioner, and must certify as to each claim, whether it has been before presented or not.

"Where the case of an appeal involves an amount exceeding two hundred and fifty dollars, and before it is finally decided, the Commissioner of Internal Revenue will transmit the case, with the evidence in support of it, to the Secretary of the Treasury for his consideration and advisement."

For some years it has been the practice of the officers of the Treasury Department to regard appeals for refunding taxes illegally assessed and paid, when deposited with collectors, under the rules, in season to be forwarded to Washington within the two years limitation, to have been duly presented to the Commissioner according to law.

IV. The facts in relation to said claim of $972.69, previous to its allowance by the Commissioner, are as follows: On the 9th day of July, 1880, the claimants, in accordance with the usual practice, and as required by the regulations, presented through the collector of internal revenue an appeal to the Commissioner of Internal Revenue for the refund of said amount. Said appeal was made upon blank form No. 46, supplied by the Internal Revenue Bureau, and furnished them for that purpose by the collector, and was left with the collector in season to have reached Washington on the 10th of July, 1880, by due course of mail.

It was duly sworn to, and bore the certificate of the deputy collector, and was as follows:

"(46.)

"*Claim under series* 6, *No.* 14, *for taxes improperly paid.*

"STATE OF PENNSYLVANIA,
"*County of Allegheny, ss:*

"Charles R. Fenderick, of the county of Allegheny, and State and county aforesaid, being duly sworn according to law, deposes and says that he is the secretary of the Real Estate Savings Bank of Pittsburg, Pa.; that they were engaged in the business of receiving and investing savings deposits; that upon the 28th day of June, A. D. 1878, they were assessed by assessor of the 22nd district of said State an internal-revenue tax of fifteen hundred and six $\frac{60}{100}$ ($1,506.60) dollars on the average amounts of deposits held during the preceding 6 months, which amount they afterwards, on the tenth day of July, A. D. 1878, paid collector of internal revenue for the said district; which assessment and payment of the aforesaid tax was, as this deponent verily believes, erroneous and improper, for the following reasons, viz:

"That the amount invested in U. S. securities, as also the average amounts of deposits, not exceeding $2,000, made in the name of one person during the time stated, was not deducted from the whole amount, but assessed in full.

"And this deonent now claims that, by reason of the aforesaid erroneous assessment and payment of the said sum of fifteen hundred and six $\frac{60}{100}$ ($1,506.60) dollars, they are justly entitled to have the sum of nine hundred and seventy-two $\frac{69}{100}$ ($972.69) dollars refunded, and they now ask and demand the same.

"And this deponent further makes oath that he has not heretofore

presented any claim for the refunding of the above amount, or any part thereof.

"CHAS. R. FENDERICK.

"Sworn and subscribed before me this 9th day of July, A. D. 1880.

"GEO. A. POWELL,
"*D'y Coll.*

"*Deputy collector's certificate.*

"I hereby certify that I have carefully investigated the facts set forth in the within affidavit, and that I believe the statements to be in all respects just and true.

"Dated July 9, 1880.

"GEO. A. POWELL,
"*Deputy Collector* 1 *Division*, 22 *District, Pa.*"

6 On 15th of July, 1880, the collector made thereon the certificate required of him by the regulations, and thereafter forwarded the whole to the Commissioner, at Washington, where it arrived on the 17th of July, 1880. His certificate was as follows:

"*Collector's certificate.*

"I hereby certify that I have carefully investigated the facts set forth in the within affidavit, and am satisfied that the statements are in all respects just and true; and I further certify, upon personal examination, that I find the sum of fifteen hundred six dollars and sixty cents reported against the said Real Estate Savings Bank, on page 2, line 35, of the list on form 23, for May, 1878, now on file in my office; and that the same was paid to me on the 10th day of July, 1878, and on the day of , 18 , and are included in my aggregate receipts for said lists, the receipts amounting to $37,865.83, and delivered to the assessor to be transmitted to the Commissioner of Internal Revenue; and that no claim for the assessment herein complained of has heretofore been presented.

"Dated July 15th, 1880.

"THOS. W. DAVIS,
"*Collector* 22 *District, Pa.*"

On the 13th of October, 1880, the Commissioner submitted said claim to the Secretary of the Treasury (Sherman) for his consideration and advisement, in accordance with the regulation mentioned in Finding III. On the 18th of October, 1880, the Secretary of the Treasury, by letter to the Commissioner, signified his approval of the payment of said claim, and on the 21st of October the Commissioner made the allowance set forth in Finding I, which allowance included another claim that has been paid, as hereinbefore set forth.

V. In relation to the previous knowledge of said claim by the Commissioner the facts are as reported by him in the following letter:

"OFFICE INTERNAL REVENUE,
"*February* 10, 1881.

"The facts relative to any prior official knowledge had by this office relative to the filing of a claim are as follows:

"The bank had made returns and paid taxes on its deposits prior to

1879, without deduction for the exemptions allowed to a certain class of savings banks.

"The return of the bank for the six months ending May 31, 1879, for the first time showed deductions as provided by law for savings banks doing no other business than receiving and loaning or investing savings deposits. On receipt of this return at this office in June, 1879, the collector of the district was requested to investigate the matter, and, if the bank was found to be entitled to the deductions claimed, to forward proof of the fact.

"Such proof, embracing a copy of the charter and by-laws of the bank, was received August 29, 1879, prior to the expiration of the two years' limitation, and on November 26, 1879, this office notified the collector that the bank had been decided to be entitled to make its semi-annual return of internal-revenue tax upon form 106, which is the form prescribed for returns of banks entitled to the exemptions now claimed by this bank.

"This office had, as will be seen from the above, knowledge of the fact that the bank had been taxed excessively, and was protesting against such excessive assessments as early as November, 1879.

"GREEN B. RAUM, *Commissioner*."

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant corporation is entitled to recover the sum of $972.69.

7 V.—*Opinion of the court.*

RICHARDSON, J., delivered the opinion of the court:

This action is brought to recover the unpaid balance, amounting to $972.69, of a certificate of allowance made by the Commissioner of Internal Revenue for the refund and payment back of taxes illegally assessed and collected.

No allegation or suggestion is made in behalf of the defendants that there is any mistake apparent upon the certificate, or that any fraud, or deceptions, or concealments were practiced in the course of the proceedings, or that there is any want of good faith on the part of anybody. They admit that the claimants erroneously paid the amount in taxes illegally assessed upon them, and that the Commissioner acted throughout in strict accord with the rules and regulations prescribed by the Secretary of the Treasury and the uniform practice of the Treasury Department for some years.

The only obstruction to the payment of the allowance is the objection now urged for our consideration that the facts show, as it is alleged, that the appeal for refund upon which the allowance was founded was not presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued, as required by the statute.

The Commissioner himself found that it was presented to him within the two years; and the Secretary of the Treasury, to whom the appeal was submitted by the Commissioner before the final decision, under the regulation requiring all such claims above $250 in amount to be submitted to him for consideration and advisement, approved the payment.

The Commissioner of Internal Revenue and the Secretary of the

Treasury are not accounting officers, and the adjudications made by either one of them upon a matter submitted by law to his sole discretion, judgment, and determination bear a different relation to the rights and liabilities of the parties from the results reached by mere accounting officers in the process of settling accounts in the Treasury Department. (United States v. Jones, 18 Howard, 92; McKnight's case, 13 C. Cls. R., 308.)

The Commissioner derives his authority from the following section of the Revised Statutes:

"SEC. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected. * * *

"SEC. 3228. All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued."

Three actions, upon certificates similar to the one now in suit, have heretofore been maintained in this court, and the law in relation to the force and effect of such certificates has been carefully considered here and in the Supreme Court.

In Kaufman's case (11 C. Cls. R., 659), which was the first of the cases referred to, we held that the Commissioner alone had jurisdiction and authority to allow a refund of taxes illegally assessed and erroneously paid; that it was for him to determine all the questions of law and fact which were involved in the appeal made to him, and that his certificate of allowance created a new cause of action upon an implied promise by the United States to pay the amount found, deter-
8 mined, and certified to be due and payable. Judgment was rendered for the claimant.

On appeal, the Supreme Court affirmed the decree and fully sustained the views which we expressed. The Chief Justice, in the opinion delivered by him, speaking for the whole court, said:

"It is now insisted that the finding of an allowance by the Commissioner is not enough, and that the court should have gone behind the allowance and found the facts in respect to the original claim.

"Such, we think, is not the law.

"To say the least, the allowance of a claim under this statute is equivalent to an account stated between private parties, which is good until impeached for fraud or mistake.

"It is not the allowance of an ordinary claim against the government by an ordinary accounting officer, but the adjudication by the first tribunal to which the matter must by law be submitted.

"Until so submitted, and until so adjudicated, there is not even a prima facie liability of the government; but when submitted, and when allowed upon the adjudication, the liability is complete until in some appropriate form it is impeached.

"When, therefore, the court found the adjudication against the government, without impeachment, the liability to pay was established.

"We do not decide that in the Court of Claims the adjudication of the Commissioner may not be impeached, but we do decide that until

impeached it is binding, and that the affimative of the impeachment is upon the government." (96 U. S., 570.)

In Woolner's case (13 C. Cls. R., 355) the claimant brought his action to recover upon an allowance made by the Commissioner for the refund of a tax on distilled spirits which had been paid a second time, by means of the purchase of tax-paid stamps, the stamps first purchased having been accidentally destroyed before they were used. The accounting officers arrested the payment of the certificate on the ground that the Commissioner did not make the allowance in the right way. We held that the defendants were concluded by the certificate, and gave judgment for the claimant. In this judgment the defendants acquiesced, no appeal having been taken by the Attorney-General.

The Bank of Greencastle case (15 C. Cls. R., 225), the third and latest case, involved a question of law very nearly, if not precisely, the same as that now raised in this action. The defense set up was that the claim or appeal had not been presented to the Commissioner within the two years required by law. On that point there was conflicting evidence both in this court and before the Commissioner, and it did not appear that all the evidence upon which the Commissioner acted was produced here.

Following the decision of the Supreme Court in Kaufman's case, as we are bound to do, we held that Congress has conferred upon the Commissioner of Internal Revenue the power and duty of passing upon the merits and determining the validity of all claims for the refund of taxes under section 3220 of the Revised Statutes, and that in an action in this court upon a certificate of allowance made by the Commissioner it is not necessary for the claimant to re-establish the material facts determined by the Commissioner, and upon which he founded his decision granting the allowance. We held further that the time of the presentation of the claim, under the circumstances, was one of the facts to be determined by the Commissioner upon such evidence as was presented to him, and that his decision thereon, in the absence of fraud or irregularity, was conclusive, and could not be set aside by this court.

That decision was also acquiesced in by the Attorney-General.

Now, upon further reflection, and a reconsideration of the whole subject after reargument by counsel, we are satisfied that the principles laid down in those cases are correct in law, and just to the government as well as to individuals who are compelled to submit to the payment of taxes assessed upon them.

9 If, however, we have jurisdiction to review the action of the Commissioner and the Secretary of the Treasury after the certificate of allowance has been made, we have no hesitation in holding that the conclusion which they reached on the point now in controversy was correct and warranted by the facts and the law.

The statute does provide that all claims for refunding shall be presented to the Commissioner within two years next after the cause of action accrued. But, evidently, that does not mean that the claim shall be served personally on the Commissioner, like the personal service of a writ or other process in an action at law. Such a presentation would be wholly impracticable, with the Commissioner residing in Washington and the claims existing in every collection district all over the country. It would be entirely contrary, also, to the uniform and well-understood course of departmental business in all branches of the government. In point of fact, claims, and other like communications, addressed to the Commissioner and transmitted by mail, or presented by

messenger at the department in Washington, are not at once delivered personally to him. They are received by clerks, and pass through several subordinate officers before they are placed in the hands of the Commissioner, whom they do not reach frequently for weeks, and perhaps months, or even years afterwards, when they are prepared by his subordinates for his final action.

Statutes must have a reasonable construction, and the language must be interpreted with reference to the subject-matter and the general course of business to which they relate, and in such manner that the beneficent provisions of remedial laws may not be thwarted by nice technicalities not within the minds of the legislators. (Wilcox's case, 95 U. S. R., 661, affirming the judgment of this court in same case, 12 C. Cls. R., 595.)

The evident object aimed at by this law was to have the proceedings for the refund of taxes actually instituted within the time limited, in order to avoid the consideration of stale claims, and not to define the manner in which they should be presented to the Commissioner. It was manifestly not within the intention of Congress to prohibit the Commissioner, or the Secretary of the Treasury, by the rules which he was authorized to make, from designating some subordinate officers to receive for the Commissioner the appeals for refund which might be made to him.

If they can designate clerks in the office at Washington for that purpose they may with equal propriety designate the collectors of the several districts, who are in like manner the subordinate officers of the Secretary of the Treasury and of the Commissioner of Internal Revenue, and as much bound to obey the instructions of their superiors as are the clerks in the bureau or department.

The Secretary of the Treasury, by virtue of the statute authorizing him to prescribe regulations, made a rule providing that claims for refunds should be presented through the collectors of the respective districts, on forms printed at the department and furnished to the collectors.

The blank form requires the certificates of the deputy collector and the collector that they have severally investigated the facts and are satisfied the statements are true. The collectors are required to keep a record of all claims presented to the Commissioner through them, and to transmit the claims to the Office of Internal Revenue.

Claimants are instructed to apply to the collector of their district for blanks upon which to prepare their appeals, and are informed that he will assist in the preparation of them; and when an appeal happens to be sent by mail directly to the Commissioner in Washington it is transmitted to the collector for his investigation and certificate.

The rule is one of convenience to the department as well as to claimants. It facilitates the transaction of the business of the bureau, and gives to claimants in distant parts of the country equal facilities with those residing in Washington. It is a reasonable and proper one to be adopted by the Secretary of the Treasury "for the government of his department, the conduct of its officers, and the custody of the papers appertaining thereto," and is within the scope of his authority as conferred by sections 161 and 3220 of the Revised Statutes.

The validity of a rule involving exactly the same principle has already been affirmed by the Supreme Court in Adams v. The United States (6 Wall., 101). The Court of Claims has a rule requiring appeals in vacation to be filed with the clerk instead of with the chief justice, who alone has the power, at such times, to allow them, and

providing that such filing shall be deemed the date of application from which the limitation of time for taking appeals shall cease to run.

It was contended that the application should have been presented to the chief justice in person within the ninety days' limitation, just as it is contended in this case for the defendants that the appeal for refund should have been delivered to the Commissioner in person within the two years' limitation. But the Supreme Court decided otherwise, and Mr. Justice Miller, in giving the unanimous opinion of the court, said:

"We think that whether done in vacation or in session, or during a temporary recess, the rule adopted by that court of requiring the application to be made by filing it with the clerk is a very proper one."

When therefore, under the instructions of the Commissioner of Internal Revenue, and in accordance with the regulations made by the Secretary of the Treasury, a collector receives for the Commissioner a duly-prepared appeal for a refund of taxes within two years next after the claim accrues, it must be held to be a presentation to the Commissioner within the meaning of the statute, if so received, accepted, and acted upon by him.

The Commissioner takes it into his own custody through his subordinate officer, who is made his duly-appointed agent for that purpose, and the claimant loses the control of it and is relieved from further responsibility to see that it reaches the hand and the eye of the Commissioner.

We said in Kaufman's case (11 C. Cl. R., 669) that—

"It has ever been the general and liberal policy of the government, under such regulations as Congress has either itself seen fit to make or has required its officers to provide, to remit and refund taxes and duties erroneously assessed or paid in excess of legal obligations, in order that the burdens of taxation may not fall unjustly upon any of its citizens."

The Treasury Department has followed the same liberal policy in construing and administering the law through the Internal Revenue Bureau. It is a principle universally recognized and enforced in the courts of law that an action cannot be maintained for the recovery back of money paid in discharge of a tax illegally assessed unless the payment was made under protest. But that principle has as uniformly been held by the Commissioner of Internal Revenue and other officers of the department as altogether too technical and too exacting for application to the refund of taxes through the Commissioner, and from the beginning no proof of protest has ever been required.

In our opinion, it would be a serious and most unjust departure from the liberal policy of the law and of the administration of it to hold now, after long practice to the contrary, that the Commissioner and the Secretary of the Treasury cannot authorize collectors of in-
11 ternal revenue to receive appeals for and in behalf of the Commissioner with the same effect as if presented personally to him.

It must not be overlooked that the question here raised is not whether a claimant for the refund of taxes has the right, independently of the directions of the Commissioner and of the regulations of the Secretary of the Treasury, to deposit his appeal with a collector of taxes, with like effect as if presented to the Commissioner, and thus, of his own motion, cast the responsibility of its custody and ultimate reception by the Commissioner upon that officer against his will. That question was submitted to the Attorney-General and has arisen in the courts, and it has been held, as it could not otherwise be held, that he has no such right, and that in such case he would make the collector his own agent

for the transmission of the claim and not the Commissioner's agent to receive it. But the Treasury regulations were not then under consideration and were not referred to.

The question here raised, and which is now raised for the first time in a court of law, is whether the Secretary of the Treasury, under the statutes authorizing him to prescribe regulations to which the Commissioner shall be subject in respect to the refunding of the taxes, and other regulations for the conduct of his subordinate officers and the performance of their business, may not designate the collectors of taxes to receive for the Commissioner claims for refunds properly addressed to him and made out on blanks furnished from the department through such collectors, and thus make the collectors the agents and receiving officers for the Commissioner in such cases—at least so far as to render valid the future action of the Commissioner and Secretary of the Treasury, based upon their decision that a delivery to a collector under regulations so prescribed is a presentation to the Commissioner.

To our minds it is as clear that the Secretary of the Treasury has such power as it is that a claimant, without such regulations, cannot make the collectors or any other officers the agents of the Commissioner.

The regulations and practice are matters of departmental business arrangements and convenience, and may well be left to the discretion of the Commissioner and the direction of the head of the department without detriment to the public service. They have been extensively promulgated and long followed. Tax-payers have become familiar with them, and have been guided by them in seeking their remedy in case of erroneous payment of taxes.

The Secretary of the Treasury may abrogate them whenever he thinks the public interest demands it.

Law and justice require that they should be upheld so long as the head of the Treasury Department allows them to be in force.

The present claimant delivered his appeal in proper form, upon an official blank, to the right collector, according to the regulations, on the 9th of July, 1880. Had the collector transmitted it to Washington by post at once, it would have reached there by due course of mail within the time of the two years limitation. But he retained it until the 15th of July, several days after the time of limitation expired, before he made upon it the certificate which the regulations required of him, and then forwarded it to the Commissioner at Washington.

For nearly a year previously the Commissioner had official knowledge of the illegality of the tax in question, had considered the subject, and on the 29th of November, 1879, had decided that for the future the bank should not be subjected to similar taxes, and might make its returns accordingly.

It was under these circumstances that the Commissioner made
12 the certificate of allowance now in suit, and the Secretary of the Treasury approved the payment of the claim on which it was founded.

To overrule their decision, if we have that right, would work great injustice to parties who have a claim which is admitted to be honestly and justly their due, who have acted in good faith, and have followed and relied upon the regulations promulgated by the Secretary of the Treasury for the guidance of persons having such business with the department.

For the reasons already given we are of opinion that we are not required either in law or justice to overrule their decision, and that the certificate of allowance stands unimpeached.

At the trial it was argued that the decision of the Comptroller refusing to pass the allowance and to countersign a warrant for its payment had some bearing upon the claimant's right to recover in this court. But such is not the case.

The Comptroller is merely an accounting officer, the agent of one only of the parties to claims against the government, the officer clothed with authority to determine whether the Treasurer shall be authorized to pay a demand in the form and under the circumstances in which it is presented to him, and not an arbitrator to finally settle and determine the legal rights of both parties.

His decisions are not conclusive against the demands of claimants. It was so held by the Supreme Court nearly fifty years ago, in the case of The United States v. Jones (8 Peters, 375). Since then the cases are numerous wherein the Supreme Court has rendered judgment in favor of claims which the Comptroller had rejected.

And even as against the United States, in respect to adjustments made by the accounting officers before consummation by actual payment, the Supreme Court, speaking through Mr. Justice Swayne, as recently as 1876, emphatically said:

"The idea that the government is finally concluded by the results at which they [the accounting officers] arrive would be regarded as a novelty within and without the several departments." (Chorpenning case, 94 U. S. R., 397.)

The decisions of a Comptroller, who, in connection with other officers, is the representative of the United States in the matter of settling accounts, may be conclusive against the government after, but not before, they are consummated by the drawing of a warrant founded thereon, signed by the Secretary of the Treasury, and by the issue of a draft on the public treasury for the payment of the amount allowed, in like manner as an individual is concluded, when, with a full knowledge of all the facts before him, he has paid a demand made against him.

On the other hand, a claimant against the United States is no more concluded by the refusal of the Comptroller to pass his account than a claimant against a corporation is concluded by the refusal of its officers to pay his demand. In each case the proper courts are open to the contending parties. (McKee's case, 12 C. Cls. R., 558. McKnight's case, 13 C. Cls. R., 292; affirmed, 98 U. S. R., 179. Buffalo Bayou & Colorado R. R. Company's case, 16 C. Cls. R., .)

When, however, an account is adjusted, settled, and paid at the Treasury Department, in accordance with the decision of the Comptroller, and the claimant is dissatisfied with the amount paid to him, and of his own motion reopens the settlement in a court of law, the previous decision of the Comptroller is not conclusive against either party, not even against the United States, as it is when the claimant leaves the settlement undisturbed. (McElrath's case, 102 U.
13 S. R., 426, affirming the judgment of this court in same case, 12 C. Cls. R., 201; McKee's case, 12 C. Cls. R., 560.)

There is no doubt of the power of the Comptroller to refuse to authorize the payment of any claim presented to him, even the salary of the President, or of a judge of the Supreme Court; but that refusal does not finally settle the legal rights of the claimant. It is his duty to refuse to pass a claim which he considers unjust and impeachable in law, and thus to leave the claimant to his remedy in the proper court.

His decisions, so far as they relate merely to the balances which are found and stated by him, are in that respect conclusive upon the executive branch of the government, but not upon Congress or the courts.

Such is the principle upon which the Treasury Department is organized, and it is so expressly provided by statute, now Revised Statutes, section 191, as follows:

"SEC. 191. The balances which may from time to time be stated by the Auditor, and certified to the heads of departments by the Commissioner of Customs or the Comptroller of the Treasury, upon the settlement of public accounts, shall not be subject to be changed or modified by the heads of departments, but shall be conclusive upon the executive branch of the government, and be subject to revision only by Congress or the proper courts. The head of the proper department, before signing a warrant for any balance certified to him by a Comptroller, may, however, submit to such Comptroller any facts in his judgment affecting the correctness of such balance; but the decision of the Comptroller thereon shall be final and conclusive, as hereinbefore provided."

In other respects the Comptrollers are as much subject to the rules, regulations, and general directions of the Secretary of the Treasury, and as much bound to obey, and to be governed by them, as are all other subordinate officers in the Treasury Department.

The jurisdiction and functions, and the force of the decisions of a Comptroller are widely different from those of a court. Those of the one are executive and departmental, and those of the other are judicial. The decisions of a Comptroller, so far only as they affect the balances found and stated by him, are conclusive on the executive branch of the government; and the judgments of a court are conclusive in all matters legally put in issue, and upon all parties to the proceedings.

It is a novel defense to set up in a court of justice that the officers of a defendant corporation or quasi corporation have decided not to pay the demand sued upon.

In these views the judges all concur. Judgment will be entered in favor of the claimant for the sum of $972.69.

NOTE.

In the case of Barnett et al., decided at the present term, the cause of action was an allowance made by the Commissioner of Internal Revenue for the refund of taxes under the act of March 1, 1879, section 6, similar to that in this case. No attempt was made to impeach the allowance. The only defense set up was that the accounting officers of the Treasury had not certified the same for payment. On that point, the chief justice, in the opinion delivered by him, speaking the unanimous views of the court, said:

"That the accounting officers of the Treasury refuse to certify for payment the Commissioner's allowance is wholly immaterial. Congress has intrusted the power of making such an allowance to the judgment and discretion of the Commissioner, subject to the regulations prescribed by the Secretary of the Treasury. In this case those regulations have been complied with, and the Secretary has approved the allowance. The case is substantially like that of the United States vs. Jones (18 Howard, 92). Jones, a lieutenant in the Navy of the
14 United States, was in Paris, France, in December, 1851, on leave of absence, and was severely and dangerously wounded by accident during the revolutionary outbreak in that month. In July, 1852, he was placed by the Secretary of the Navy on special duty for the collection of information relative to the steam navy of France. Afterwards, in August, 1852, the sum of $1,000 was transmitted to him by

the Secretary of the Navy, with orders to apply it 'to discharge the expenses attending the injuries received by him in Paris,' and the money was disbursed according to that order. The accounting officers of the Treasury charged the amount so disbursed by Jones against him on his pay account, and refused to recognize the authority of the Secretary of the Navy in the premises. The Supreme Court sustained his action, and overruled that of the accounting officers, and said: 'The liability of the defendant to refund this money to the government is founded on the act of the accounting officer charging him with it, because, in his opinion, the Secretary of the Navy had mistaken the law or abused his discretion. His acts and decisions on subjects submitted to his jurisdiction and control by the Constitution and laws do not require the approval of any officer of another department to make them valid and conclusive. The accounting officers of the Treasury have not the burden of responsibility cast upon them of revising the judgments, correcting the supposed mistakes, or annulling the orders of the heads of departments.'"

15 VI.—*Judgment of the court.*

At a Court of Claims held in the city of Washington, on the 18th day of April, A. D. 1881, judgment was ordered to be entered herein as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said The Real Estate Savings *of* Bank of Pittsburgh do have and recover of and from the United States the sum of nine hundred and seventy-two $\frac{69}{100}$ dollars ($972.69.)

16 VII.—*Application of defendants for and allowance of appeal*

From the judgment rendered in the above-entitled cause on the 18th day of April, 1881, in favor of claimant, the defendants, by their Attorney-General, on the 10th day of June, 1881, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed June 10, 1881.
Allowed.

C. D. DRAKE,
Chief Justice.

17 VII.

In the Court of Claims.

THE REAL ESTATE SAVINGS BANK OF PITTSburgh
vs.
THE UNITED STATES. } No. 12392.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the final

judgment of the court of the application by the defendants for the allowance of appeal to the Supreme Court of the United States, and of the allowance of same by Chief Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this thirteenth day of September, 1881.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 900. The United States, appellant, vs. The Real Estate Savings Bank of Pittsburgh. Court of Claims. Filed 14th September, 1881.